To:

Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
E-mail: public.participation@unece.org

COMMUNICATION TO THE AARHUS CONVENTION'S COMPLIANCE COMMITTEE

by

Organization name: Non-profit Association Civil Control – Animal Protection
Permanent address: Naiden Gerov 17 Str, 4000 Plovdiv, Bulgaria
Telephone: +359988866907
E-mail: georgi.serbezov@abv.bg

Contact person authorized to represent the organization: Georgi Serbezov
Position: Chairman of the Board
Telephone: +359988866907
E-mail: georgi.serbezov@abv.bg

- **Party concerned:** BULGARIA

- **Confidentiality:** Not confidential

- **Nature of alleged non-compliance**: The communication is in connection with the case of non-compliance with provisions of the Convention, which have violated the rights of the public - the population of Plovdiv and the affected public – the organization-communicant:

  In addition, the case adds new facts not only to the failure of Bulgaria to follow the recommendations contained in the findings (ECE / MP.PP / 2014/13) of the Committee on communication ACCC / C / 2011/58 (ECE / MP. PP / C.1 / 2013/4) concerning access to justice on spatial plans, but also to the inconsistency of the claims of the party concerned, set out in the first (06.01.2015) and second (28.10.2015) progress reports on Decision v / 9d of the Meeting of the Parties on compliance by Bulgaria with its obligations under the Convention (ECE / MP.PP / 2014/2 / Add.1).

  Finally, in our opinion, the case presents the subject of another communication - ACCC / C / 2012/76 - in a completely different new light. The Findings and recommendations with regard to communication ACCC / C / 2012/76 concerning compliance by Bulgaria (ECE / MP.PP / C.1 / 2016/3) deals only with the orders for preliminary execution (order for preliminary enforcement[1]), issued by the administrative authority itself. However, the court also has the power to allow preliminary execution of the acts, which is precisely the procedure used in the case described below. This procedure has remained outside the

1 We believe this is not correctly translated – the correct way is "order for preliminary **execution**"

attention of the Committee and, in our opinion, it represents a serious potential for abuse and a way to circumvent the national environmental legislation, which is how Bulgaria violates the provisions of the Convention.

If there is a procedural possibility for that, we kindly ask the Committee to consider the facts and reasoning set forth herein, also in relation to the above cited communications ACCC/ C/ 2011/58 (Bulgaria Decision V/9d) and ACCC/C/2012/76 as a comment or in another appropriate form.

- **Provisions of the Convention relevant for the communication**:
    - Article 7 (Article 6, para. 3 and para.8)
    - Article 9, para. 2 , para. 3 and para. 4
- **Use of domestic remedies:**

1. The communicant challenged before the Administrative Court of Plovdiv (PAC) the decision of the competent authority (the Director of the Plovdiv Regional Inspectorate of Environment and Water) – its decision not to carry out an environmental assessment (EA) of the amendment of the General Spatial Plan (GSP) of Plovdiv. Administrative case 1443/2014 was initiated. By Decision № 1756 /01.10.2015 on the case PAC revoked the decision of the Director of the Regional Inspectorate. The decision of the PAC was appealed by the Municipality of Plovdiv, the case in the Supreme Court is scheduled for 2017.

At the request of the municipality of Plovdiv during the administrative case 1443/2014 of PAC, by order 513 / 05.03.2015, the court allowed preliminary execution of the contested decision - to not make EA of the amendment of the GSP. The communicant appealed against the Ruling to allow a preliminary execution, administrative case № 4716/2015 of the Supreme Administrative Court (SAC) was initiated. By Ruling № 6227 / 28.05.2015 on the case SAC revoked Ruling 513 / 05.03.2015 of PAC allowing preliminary execution.

This legal challenge of the decision on the EA we mention only for the sake of completeness, although it is not related to violations of the provisions of the Convention - the subject of this communication. The organization-communicant has exercised its right of access to justice against the act on EA for the amendment of the GSP and the court revoked it at the first instance.

In the course of those proceedings, however, the court has allowed preliminary execution of the contested decision on the SEA, which - in the time window while there was a case for annulment of the allowed preliminary execution - has served as a basis for approval of the amendment of the GSP, although illegally. Although the allowed by PAC preliminary execution of the decision on the EA was canceled definitively by the SAC, it in no way affects the legality of the decision of the Municipal Council of Plovdiv on the amendment of the GSP – although based on grounds no longer valid, it remains in force for lack of legal means to challenge it through administrative and / or judicial proceedings by any legal entity, including the public and the affected public.

2. The organization-communicant challenged to PAC Decision № 65, taken with Protocol № 6 / 19.03.2015 of the Municipal Council - Plovdiv (MC), approving the amendment of the current GSP of Plovdiv. By order 1079 / 30.4.2015 on adm.case 930/2015 the Court rejected the complaint and dismissed the case. The motives are 1) unchallengeability of the GSP, and 2) the appeal is inadmissible because the applicant organization has no *locus standi* to challenge the act for the amendment of the GSP, but only the act of Plovdiv Regional Inspectorate for assessing the need for SEA / CA.

The organization-communicant appealed before the Supreme Court the above Ruling. By Ruling № 9280 of 08.28.2015 on Administrative case №7777 / 2015 the Supreme Administrative Court (SAC) rejected the association's request to suspend the proceedings in this case pending the outcome with an effective judicial act of proceedings on administrative case № 1443/2014 of PAC and confirmed Ruling № 1079 of 30.04.2015 on administrative case № 930/2015 of PAC.

In this case the communicant sought protection against the failure to comply with the provision of Article 7, Article 9, par 3 and par.4 the Convention - protection that cannot be sought in a different order and in the course of other proceedings, except in challenging the final act - the decision of the Municipal Council of Plovdiv amending the GSP.

3. The organization-communicant made no referral to the county governor, who, by virtue of Article 127, paragraph 6 of the Spatial Planning Act (SPA) has the power to reverse the decision of the Municipal Council to amend the GSP and / or to challenge it in court on the following grounds:

- there is no legally regulated procedure for such referral;
- there is no legal obligation for the governor to consider and rule on requests of this nature
- there is no legally regulated procedure to protect against failure of the governor to consider and rule on a request of this nature
- The norm of Article 45, paragraph 4 of the Local Government and Local Administration Act (LGLAA) gives the governor power to review the legality of all acts of municipal councils. The decision of the Municipal Council of Plovdiv, adopting the amendment of the GSP, has been subjected to such review, but (as the governor did not return the decision, nor did he challenge it in the 14-day legal period), this formal review obviously has found no irregularities despite the many significant legal defects of the decision of the Municipal Council of Plovdiv.

4. On 25.03.2016 the communicant submitted to the Minister of Environment and Waters a reasoned request for imposing compulsory administrative measure (CAM) - suspension of amendments of the GSP of the city, approved by Decision № 65, taken with Protocol № 6 / 19.03.2015 of the Municipal Council of Plovdiv..

5. By letter 48-00-295 / 26.04.2016 the Minister of Environment and Waters forwarded "in competence" the request of the communicant to the Director of RIEW Plovdiv.

6. By letter M-148 / 25.05.2016 the Director of Plovdiv Regional Inspectorate refused to impose the requested CAM and explained the lack of legal opportunity to be addressed with such a request by "third parties", referring also to the author of the request - the communicant. We believe that this letter also answers the question posed by the Committee (Question # 2 from letter dd 16 April 2016) to The Party concerned in Bulgaria Decision V / 9d. We share fully the views expressed by the Director of RIEW Plovdiv (page Final, paragraph penultimate) on **the inability organizations to approach the MEW / RIEW with a request for imposing CAM** - similar to the request to the county governor (point 3 above), there is no legally regulated procedure for such referral, nor is the minister obliged in any way to consider and rule on such a request. In the absence of an obligation for the minister, obviously we cannot talk about seeking judicial remedy against his refusal to examine the request at all and refusal to impose requested CAM. However we sent our

request to have the opportunity to present to the Committee specific facts regarding the veracity of the claims[2] of the Party concerned, represented by the same Minister set out in the First Progress Report (06.01.2015) on Bulgaria Decision V / 9d.

- **Facts of the communication**

7. The subject of this communication is an amendment of the general spatial plan of the city of Plovdiv, approved by Decision № 65, taken with Protocol № 6 / 19.03.2015 of the Municipal Council of Plovdiv. It has changed the way of permanent use of a territory of approx.800 decares, almost entirely falling within the borders of two protected areas under Natura 2000, from Zone for public green space to Zone for sport and entertainment. While the status of the first zone allowed[3] no more than 1% construction, for the second regulatory framework[4] provides[5] minimal landscaping of 20%, i.e. maximum building of 80%. The affected by the amendment area represents a landscaped parkland (mostly natural, partly decorative) and some rare, endangered and protected species[6] were detected on its territory.

8. First, the norm of Article 62, paragraph 1 of the SPA **categorically excludes the possibility of change of use of existing green areas, which are made pursuant to the provisions of the development plans.** The provisions of the current GSP before the amendment are precisely for Zone for public green spaces, as was implemented.

9. Secondly, pursuant to Article 82, paragraph 4 of the EPA an **enacted opinion or decision on SEA is a prerequisite for the subsequent approval of the plan**. This legal mechanism for preventive control is consistently cited as "absolute imperative condition for approval of spatial plans" in all progress reports of the Party concerned on communication ACCC / C / 2011/58 (Bulgaria Decision V / 9d) and ACCC / C / 2012 / 76. For this specific case the corresponding provision of Article 31, al.16 of BDA is applicable as well - mandatory presence of an effective co-ordination decision regarding the procedure of CA (Compatibility Assessment), given the fact that amendment of the GSP falls within the territory of two protected areas under Natura 20000.

In this case, the **decision on the EA has not entered into force even at present**. It has been annulled by the Court.

10. In this case it doesn't matter how the proceedings will end and whether the decision regarding the EA (discretion not to make EA) will be finally repealed or upheld. From the approval of the amendment of the GSP by the Municipal council of Plovdiv (19.03.2015) until completion of cassation proceedings (the middle of 2017 at least) the amended GSP is in force, although violating a mandatory legal provision - **there is no effective decision** on EA. Even if in 2017 the Supreme Court confirms the decision of PAC, annulling the decision on SEA, the amended GSP will continue to be in force.

2 If at any stage of the investment process is allowed unlawful issuance of an act under the SPA – in violation of provisions of the EPA, compulsory/coercive administrative measures may be applied for suspending the implementation of spatial plans and investment projects, as already practiced in our country. … It is important to note that compulsory administrative measures may be implemented on the initiative of the public concerned.

3 Development indicators: Appendix 2 to the GSP of Plovdiv – item 28, PGS; Ordinance 7 Article 32, paragraph 1.

4 Ordinance № 7 of 22.12.2003 of the Ministry of Regional Development for rules and regulations for development of the different types of territories and development zones.

5 Art.33, par.2 of Ordinance № 7 of 22.12.2003 of the Ministry of Regional Development

6 Opinion on the risk of destroying habitats and plant species in the implementation of project for the second rowing channel in Plovdiv - Dr. Kiril Stojanov, Department of Botany and Agrometeorology / Herbarium SOA, Agricultural University Plovdiv

11. Although Plovdiv Municipal Council refers to Ruling 513 / 05.03.2015 on adm.case 1443 / 2014 of PAC, which allowed preliminary execution of the decision on EA, it:

a) was revoked by an effective final ruling № 6227 / 28.05.2015 on Adm.case № 4716/2015 of SAC.

b) could not serve as a basis for approval of the amendment of the GSP, even for the period from its issue until its repeal, because if does not make the decision on EA **effective.**

We pay special attention to the above a) and b) as far as they are critical for proper assessment of the case - subject of this communication, and for communication ACCC / C / 2012/76 in general.

12. Under Article 167, Paragraph 3 of the APC *"If the preliminary execution is canceled, the situation that existed before the execution is restored."* The situation before the execution is to preserve / restore the GSP of 2007, i.e. to overrule the amendment of the GSP of 03/19/2015, which changed the status of area PGS to ZSE. This *restoration of situation* was not done by any authority within the meaning of Article 2, par.2 of the Convention, and **national law provides no legal remedy for the organization-communicant, as representative of the public concerned, in this case**. Annulment of the effects of the amendment of the GSP may be requested only in proceedings challenging the decision of the Municipal Council, which approved amendment of the GSP , but:

- for this case in particular: this has already been done and the issue was finally resolved and not subject to appeal;

- there is a legally effective Ruling № 9280 from 28.08.2015 of SAC on Adm. case №7777 / 2015, which upheld Ruling № 1079 from 04.30.2015 on admin.case № 930/2015 of PAC, which ruled inadmissible the complaint against the decision of the Municipal Council of Plovdiv amending the GSP from 19.03.2015 and is left without consideration. No matter what motives of illegality were listed in the complaint, the court considers that the complaint against the decision for approval of the GSP, submitted by the organization-communicant, is inadmissible and should never be considered.

- in general: from the case law attached to communications ACCC / C / 2011/58 (Bulgaria Decision V / 9d) and ACCC / C / 2012/76, it is evident that no representative of the public concerned can contest in court acts which adopt / approve the GSP or any amendments thereto, regardless of the grounds for contestation. **In particular, in cases where preliminary execution of the decisions / opinions on SEA were allowed and then used as a basis for acceptance / approval of the GSP or its amendment, after the cancellation of the admitted preliminary execution by the court, there is no legal way in which the representative of the public concerned to insist on mandatory recovery of the situation before execution, i.e. to repeal the adopted / approved in the meantime GSP ot its amendment, which in this case is accepted / approved on grounds no longer valid.** For completeness, it should be noted that the preliminary execution of an administrative act can be allowed by an order of the authority issuing the act (Article 60 of the APC) and by order of the court (Article 167 of the APC) during the proceedings challenging the act when the interested party is making the request. In the first case the provisions of Article 60, paragraph 6 clearly states the administrative body as the body which restores the situation and the second (Article 167, paragraph 3) does not specify who is responsible for restoring the situation before execution. **In both cases, however, in case of inaction or refusal of the body responsible to restore the situation before the execution, the representative of the public concerned, contesting the decision on SEA (for GSP), which allowed preliminary**

execution was duly canceled by the court, has no legal means to challenge this refusal or omission. In fact, because of the unchallengeability of the GSP and its amendments (art.215, paragraph 6 of SPA) it is practically impossible even for the authority who issued the order for admission of preliminary execution, to restore the situation as it would mean cancellation of the already adopted / approved GSP. **Therefore, when preliminary execution of the decision on SEA is granted and GSP or its amendments are adopted / approved on this basis, it is of no importance whether this preliminary execution will be revoked by the court, because no legal entity can cancel the already adopted GSP.** The county governor – pointed out by the Party concerned as the single statutory body having the power to challenge the GSP (Article 127, paragraph 6 of SPA), could not even exercise that power, since it is precluded by the 14-day term - obviously insufficient time for a final court ruling on the legality of the admitted preliminary execution (in this case the cancellation took almost three months). **This is a serious precondition for abuse and circumvention of virtually all environmental legislation - all violations of EPA, PAA, BDA and others remain without any consequences as long as the GSP is once accepted / approved, i.e. admission of preliminary execution of decisions on SEA can be used as a tool to guarantee the assignor the adoption of even the most unlawful in terms of environmental legislation GSP.** This situation, as is the case of amendment of GSP of Plovdiv, and in principle we believe is a violation of article 9, par 3 (a lack of access to administrative or judicial procedures to challenge omissions of public authorities violating provisions of national legislation concerning the environment) and/ or 9, par.4 (lack of adequate and effective remedy). The above case is an especially curious illustration of the above – the GSP of Plovdiv, acting for two years now, was adopted on reasons no longer existent (revoked by the court allowed preliminary execution of the decision on SEA) and the absence of **a valid** final decision on the SEA, which was even canceled by the first instance court.

13. In relation to the subject of communication ACCC / C / 2012/76 - the preliminary executions referred to above, we would like to present our fundamentally different view: **we believe that in principle and in general admission of preliminary execution of the decision on SEA is unlawful and inadmissible measure in proceedings for approval of Master Plans (GSP).** Obviously, municipalities - contractors, and competent SEA bodies and administrative courts advocate the opposite opinion, which further strengthens the doubts that The Party concerned actually does not seek implementation of the Convention but tools to circumvent the law. Our main argument is that the imperative legal requirement for effective decision on SEA as a prerequisite for approval of the plan is misinterpreted as "*allowed preliminary execution*" and is considered equivalent to "*an effective act*" – **these two are in no way equivalent and admission to the pre-execution cannot be considered to fulfill the legal requirement to have an effective act on SEA.**

14. The Administrative Procedure Code (APC) provides no legal definition of when an administrative act comes into force. A number of judgments, however, without controversy, have advocated the view that:

- „*individual administrative acts come into force when they become unchallengeable in the way of regular means of reviewing their legality, and they become such when they are not appealed within the statutory period or the complaint is dismissed"*[7]

7 Decision No. 28 / 06.03.2013 by Administrative Court Stara Zagora (Bulgarian only, attached, highlighted)

- *"Admission of preliminary execution is a temporary measure having effect only during the pending proceedings."*[8]

- *"when the individual administrative act was not appealed administratively and judicially, with the expiry of the statutory period for appeal it is considered entered into force. Entered into force individual administrative act means exhausted legal competence of the administrative authority to be a party to the particular relationship. It is exactly the precluded power of the administrative body to influence/change decisions on issues in already completed proceedings that provides the formal legal force of individual administrative act .... therefore, an entered into force administrative act guarantees its addressee a final and incontestable solution of the material legal problem as ruled in the act."*[9]

15. The very possibility of reversal of admitted preliminary execution and the fact that it represents an extraordinary **temporary** measure precludes the possibility of its entry into creating a final and incontestable stability for the act. Obviously in this case the admission of the preliminary execution of the decisions on SEA may not be unlawful and is permissible under the general rules of the APC, but it, however, cannot produce and is not equivalent to the entry into force of the act on SEA, i.e. with or without allowed preliminary execution, the decision on SEA (when it is contested) has not entered into force until **the final court ruling on its legality and till then the GSP cannot be approved. Allowing preliminary execution, either under Article 60 or Article 167 of the APC, does not in any way satisfy the requirement of Article 82, paragraph 4, sentence second of the special EPA and 31, al.16 of special BDA.** Therefore, all GSPs approved on the grounds of allowed preliminary execution of the contested decision on SEA were illegal because they were approved **without an effective act** on SEA. And, once approved, because of its unchallengeability the GSP always and immediately after its promulgation enters into force and it is practically irrelevant whether there is any decision on SEA, whether it still challenged in court or even whether it will be canceled by the court - actually there are no legal means for the public concerned to protect against **any omission** of state bodies involved in the proceedings on the approval of the GSP. For example, the obligation to take into account the outcome of the public discussions, which - according to the provisions of Art.7 in relation to art.6, par.8 of the Convention - should be guaranteed, but, as it will be apparent from the stated below, was not only neglected in this case of amendment of the GSP of the city, but generally the only form of participation of the public concerned in the process of decision-making on issues related to the environmental aspects of the development plans is limited to giving opinions during the public discussions and consultations on the SEA procedure, without any guarantee that they will be considered.

16. The provision of Article 127, Paragraph 1 of the Spatial Planning Act states: "*The draft general spatial plans are published on the website of the municipality and are subject to public discussions before being submitted to expert councils on spatial planning. The investor of the project organized and conducts public discussions by announcing the location, date and time with a notice being placed on designated areas in the building of the municipality, district council or city hall, as well as in other previously disclosed publicly accessible locations in the territory – subject of the plan, and published on the website of the investor and the municipality, in a national newspaper and one local newspaper. Written*

8 Ruling No.10229 / 08.07.2011 by the Supreme Administrative Court (Bulgarian only, attached, highlighted)

9. Decision No. 1454 / 04.11.2010 by Administrative Court Plovdiv (attached, highlighted)

protocol is kept of public consultations and discussions, which is later enclosed to the documentation for the expert council and the municipal council. In cities with regional division public discussions must be organized in all districts. Public discussions are incorporated in and are of a procedure for consultations on the environmental assessment and / or compatibility assessment that the investor of the project shall organize and conduct under the EPA and / or the Biodiversity Act. Considering the provisions of Article 7 of the Convention it should be noted that the law itself does not place restrictions on the public who can participate, and, as evidenced by the attached notice of public discussions, Plovdiv municipality has addressed the invitation to the general public (not explicitly specifying the public that can participate).

17. Notices of upcoming public discussions on the draft amendment to the GSP of Plovdiv were published on 12.10.2013 in one local and one national daily newspaper in the "advertisements" section of the newspapers. The notices give no information about the place where the documentation is available for examination.

18. On 12, 13 and 14 December, 2014 Plovdiv Municipality held public discussions in all six administrative regions. Discussions were held 2, 3 and 4 days respectively after the date of publication of notices. We believe that 2-4 days in no way can be considered a reasonable time frame for the public participation procedure, allowing sufficient time for informing the public and for the public to prepare and participate effectively, i.e. there is a violation of the provisions of article 6, par 3 with regard to Article 7 of the Convention. Another violation is the lack in the notice of information about the place where the documentation is available for examination (draft amendment of the GSP), resulting in all participants in the discussion being introduced to the project during the very discussion. Finally, the notice stipulates that the subject discussed will be "*Draft amendment to the GSP of Plovdiv with scope - Zone ZSE within the territory of the Sports complex Recreation and culture*." This virtually encrypted to the general public title in no way makes it clear that the territory whose spatial use is to be changed is part of the green system of the city, that it fall almost entirely in two protected areas and that the project provides for its almost complete (80%) development. "*Scope - Zone ZSE*" apart from being completely incomprehensible, is totally misleading because the amendment is within the scope of the current zone for public green spaces, which is transformed in the project into an area for sports and entertainment (ZSE). The notice does not make it clear in any way, though legal basis for discussion are formally cited - Article 127, Paragraph 1 of the SPA, that discussions are part of a procedure for consultation on the environmental assessment and / or evaluation compatibility under sentence last of the above provision.

19. According to The Aarhus Convention - An Implementation Guide, p.179, section Transparent and fair framework, "*The reference to a transparent and fair framework emphasizes that the public must have opportunities to participate effectively. To do so the public must be able to use rules that is applied in a clear and consistent fashion, which in turn requires the implementation of a transparent and fair framework*." Not only in the particular case under consideration, but in general, neither the law requires nor the administration determines **any** framework whatsoever. There is nothing of the kind. Discussions were held without any regulation or rules with practically **no guarantee** of effective participation.

20. Minutes of the public discussions **have not been applied to any documentation**

neither for the expert council nor for the Municipal Council or the Director of the Regional Inspectorate. To the first two sets of documentation a piece of paper is attached, named by its authors *"Summary of protocols of public discussions"* where on no more than half a page the objections and opinions are "summarized" in the most frivolous and tendentious way including opinions – such on legality, by citizens, experts and organizations expressed during the six public discussions. We have full video of all six discussions. As evidenced by Protocol 24 of 30.05.2014 of ECSP (Expert Council of Spatial Planning) and the reasons for the decision of the Municipal Council of Plovdiv for approval of the amendment of the GSP, even the "summary version" of the opinions of the discussions was not taken into account in any way. Documentation for the Plovdiv RIEW does not include even this piece of paper. The decision on the SEA neither mentions nor comments the public discussions.

21. Since the protocols have not been applied to any set of documentation, apparently **none of the above listed authorities not only disregarded the expressed objections and opinions, but even theoretically could not have taken them into account.** The lack of protocols in the documentation for the expert council and Municipal Council represents a direct violation of the requirement of Article 127, paragraph 1, sentence three of SPA.

22. Despite the expressed during discussions opinions on the need to substantiate the health risks in view of the potentially negative effects of allowing 80 % development on existing park zone with an already severe and persistently excess air pollution PM10, it was not neither reported nor even discussed by any of the above authorities.

23. In summary of items 16-21 above, we believe that in this case no one can speak of public participation in any form. Instead of being encouraged, it was hindered and eventually **completely ignored**, which constitutes a violation of article 6, par 3 and par.8 in connection with Article 7 of the Convention.

24. The above was stated in our complaint against the decision for amendment of the GSP of Municipal Council of Plovdiv as a material breach of administrative and procedural rules, but, as stated above, the complaint was left without consideration as inadmissible, and national law provides no other line of defense against the full ignoring of public participation. We believe that doing this the Party concerned again violates the provisions of Article 9, par.2 of the Convention.

25. In connection with both this case and Bulgaria Decision V / 9d, we draw attention to the attempt of the communicant, having exhausted all other legal remedies, to approach the Minister of Environment and Waters with a request for imposition of CAM provided for in art.158, item 4 of the Environmental Protection Act and Article 122, Paragraph 1, Item 2 of the BDA - suspension of the implementation of the GSP. With all listed here offenses and violations of the Convention in connection with the case, the Minister chose to forward our request to the Director of RIEW Plovdiv (who does not have the power to order the CAM and is at the same time a party to a pending lawsuit that is against his decision on SEA - canceled at the first instance, namely the lack of an effective decision on SEA is the main argument for our request for imposing of CAM).

26. As discussed in section *Use of domestic remedies* p.6, the Director of the Regional Inspectorate of Environment and Water Plovdiv, apart from refusing to impose the CAM requested, expressed in principle the correct opinion that **we have no right to approach the minister with such a request**. Indeed, there is no rule which requires the Minister to consider requests from third parties, incl. representatives of the public concerned, to impose

suspensive CAM of the type requested in the absence of an obligation to examine, no judicial remedy could be sought against a refusal a claim to be considered, and against a refusal to impose CAM. This disproves the statement of the Minister of Environment and Water, in his capacity as representative of the Party concerned in Bulgaria Decision V / 9d (communication ACCC / C / 2011/58), expressed in the First Progress Report (quotation: this document , p.4, footnote 2). In other words, The Party concerned states that the possibility of imposing CAM by the Minister of Environment and Water **cannot be done** at the request of representatives of the public concerned and they cannot seek protection against a refusal their claim to be considered, i.e. referral to the Minister with a request for imposition of CAM as a final means of suspending the implementation of the GSP approved in violation of national environmental legislation and the Convention does not constitute an effective legal remedy for the public concerned.

- **Supporting documentation:**

1. Announcement from 10.12.2013 about an upcoming public discussion about the draft of an amendment of the GSP of Plovdiv (English translation)
2. A motivated request from the communicant to the Minister of environment and water for imposing CAM - suspension of the implementation of the GSP (English translation)
3. Letter Ref. No. 48-00-295/26.04.2016 from the Minister of environment and water to the Director of RIEW – Plovdiv, forwarding the request from 2. (English translation)
4. Letter Ref. No. M-148/25.05.2016 from the Director of RIEW – Plovdiv refusing to impose the CAM from 1. and 2. (Bulgarian only)
5. Ruling No.1079 from 30.04.2015 by Administrative Court Plovdiv (English translation)
6. Ruling No.6227 from 28.05.2015 by the Supreme Administrative Court (English translation)
7. Ruling No.9280 from 28.08.2015 by the Supreme Administrative Court (English translation)
8. Decision No.1756 from 01.10.2015 by Administrative Court Plovdiv (English translation)
9. Decision No. 28 from 06.03.2013 by Administrative Court Stara Zagora (Bulgarian only)
10. Ruling No. 10229 from 08.07.2011 by the Supreme Administrative Court (Bulgarian only)
11. Decision No. 1454 from 04.11.2010 by Administrative Court Plovdiv (Bulgarian only)
12. A graph (PM10 levels for 2000-2015) from the annual report by the Director of RIEW – Plovdiv for 2015

Georgi Serbezov

Chairman of the Board, Non-profit Association Civil Control – Animal Protection

11.11.2016